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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

SHELTON R. BERTRAND; ET AL.,

Plaintiffs,

V.

SUNTRUST MORTGAGE, INC.,
a Virginia corporation; ET AL.,

Defendants.

Civil No. 09-857-JO

OPINION AND ORDER

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JONES, Judge:

Plaintiffs Shelton and Rebecca Bertrand bring this action against defendants SunTrust Mortgage, Inc., First American Title Insurance Company, and Federal National Mortgage Association, seeking to void a foreclosure sale of their home in September 2009, and recover damages.

The case is before the court on defendants' motions for summary judgment (## 27, 33). Defendants filed their motions in mid-July 2010. While the motions were being briefed, a veritable tsunami of investigation into and litigation over mortgage foreclosure practices broke loose on a national scale. Federal banking regulators are involved.¹ All 50 states have launched a joint investigation into the mortgage industry's "alleged use of faulty or fraudulent documents to complete tens of thousands of foreclosures." Stephanie Armour, *All 50 States Launch Joint Investigation into Foreclosures*, USA Today (Oct. 13, 2010, 11:12 AM).²

Recently, in Rinegard-Guirma v. Band of America, et al., Civil No. 10-1065-PK, Magistrate Judge Papak enjoined a mortgage foreclosure, finding that plaintiff has a likelihood of

¹ Jeannine Aversa, *Fed Boss: Regulators Looking into Foreclosure Mess*, Yahoo News (Oct. 25, 2010, 5:10 PM) (http://new.yahoo.com/s/ap/20101025/ap_on_bi_ge/us_bernanke_housing).


² Found at: <http://www.usatoday.com/money/economy/housing/2010-10-13-states-foreclosures-N.htm>.

success on the merits of her claim that Mortgage Electronic Registration Systems, Inc. ("MERS"), a defendant in that case and a significant player in this case, lacked authority to transfer her promissory note even if it had authority to transfer the trust deed. Rinegard-Guirma, (Opinion and Order, Oct. 6, 2010) (# 39), pp. 7-9. In so ruling, Judge Papak questioned whether MERS qualifies as a "beneficiary of the trust deed" within the meaning of Oregon law, specifically ORS 86.705(1). Rinegard-Guirma, p. 8.

Plaintiffs in this case similarly challenge MERS' role in the foreclosure of their home. In view of the present controversy affecting the entire mortgage foreclosure industry, and acknowledging that the defendants in this case and in Rinegard-Guirma are not the same, I decline to resolve the pending motions for summary judgment and defer the motions to permit the parties to submit supplemental briefing to explain how the issues in the present case may be distinguished from those before the court in Rinegard-Guirma. Accordingly, defendants may file a supplemental brief as described, not to exceed 15 pages, within 30 days. Plaintiffs have an additional 30 days to file a response, not to exceed 15 pages. No further briefing will be accepted without leave of court.

IT IS SO ORDERED.

DATED this 1st day of November, 2010.



ROBERT E. JONES
U.S. District Judge